

Testimony of Todd McCracken

President

**On Behalf of
The National Small Business Association**



House Government Reform Subcommittee on Regulatory Affairs

Hearing:

**“Plain Language Regulations: Helping the American Public
Understand the Rules”**

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Chairwoman Miller, Ranking Member Lynch and Members of the Government Reform
Regulatory Affairs Subcommittee:

On behalf of the 150,000 small-business owners represented by the National Small
Business Association, I would like to thank you for the opportunity to appear to discuss
the necessity of plain language in crafting regulations as a common-sense approach to
saving the federal government and small businesses time, effort and money.

I. The Burden and the Current Rules

Small businesses in the United States face many challenges that hinder their overall
success. One of these obstacles is trying to understand, interpret and comply with the
overwhelming array of federal regulations. Time and again, we hear from small
businesses about their desire to have a more simplified approach to complying with
federal regulations and their paperwork requirements. Yet, more often than not, small-
business owners find themselves buried under mountains of paperwork when they could
be helping their customers, hiring new employees and expanding their businesses.

Small businesses experience a hard time dealing with the complexity of ambiguous
terms, intricate technical language and difficult sentences. The increased burden causes
them to have trouble understanding the requirements. This forces them to spend more
time trying to interpret the rules and ensure they are completing the forms accurately thus
avoiding being fined by the agency for noncompliance. The best thing for small
businesses is simplicity: simplicity in instructions, in requirements, in consequences and

an overall reduction in the size of the paperwork and the time necessary to complete the forms.

On June 1, 1998, at a Small Business Week event Vice President Gore announced a Presidential Memorandum calling on all new government regulations to be written in plain language, making government writing clearer and easier for Americans to understand. President Clinton signed the Executive Memorandum directing agencies to: (1) write any new document that tells the public how to get a benefit or comply with a requirement in plain language by October 1, 1998; (2) write all new government regulations in plain language by January 1, 1999; and (3) revise all existing letters and notices into plain language by 2002. The goal of Executive Order 12866 is for regulations to be simple and easy to understand with the hope of minimizing the potential for uncertainty. However, regulators are still using the usual bureaucratic jargon instead of writing rules complying with the “plain English” guidelines.

II. Time and Simplicity are the Key

While small business owners agree compliance assistance is necessary, it also must be streamlined and put into plain-language. It is unrealistic for small businesses to comply if the only methods of communication are huge envelopes that are packed with books and pamphlets. Although small business owners appreciate the efforts and hard work put into creating detailed instruction manuals, agency officials must consider the time it will take for the recipient to read through a 195- page instruction manual and decipher poorly organized, difficult to read forms that contain an abundance of technical terms. Most

small-business owners do not have the training or experience to translate legalese and decipher the convoluted directions that accompany most government forms.

With the already disconnected nature of Washington, the government should not use a specialized language understood by those only on the inside. It is every citizen's right to understand what the government is doing. But regular, every-day people are not getting a clear, precise message about what the government is doing, what it requires, and what services it offers. Instead, citizens are finding themselves faced with various sanctions and penalties because they are struggling to understand the many rules they need to follow. Small-business owners are smart, entrepreneurial, creative and quick students. They are not, however, regulation specialists.

III. Past Experience with Regulatory Rules Proves No Enforcement

Enforcement is an issue the small-business community has tried to address over the years. Beginning in 1980 with the passage of the Regulatory Flexibility Act (RFA) which required agencies to review the impact of proposed rules and include in published regulatory agendas those likely to have a "significant economic impact on a substantial number of small entities." The U.S. Office of Advocacy was charged to monitor agency compliance with the new law. Over the next decade and a half, the office carried out its mandate, but it was soon clear that the law wasn't strong enough.

In 1995, the third White House Conference on Small Business examined the RFA's weaknesses. The Administration's National Performance Review recommended that

agency compliance with the RFA be subjected to judicial review. In March 1996, President Clinton acted on the recommendations and signed into public law (104-121) the Small Business Regulatory Enforcement Fairness Act (SBREFA). This gave the courts jurisdiction to review agency compliance with the RFA, requiring the Environmental Protection Act (EPA) and Occupational Safety and Health Administration (OSHA) to convene small business advocacy review panels, and affirming the chief counsel's authority to file *amicus curiae* briefs in appeals brought by small entities from final agency actions.

IV. OIRA as the Enforcer

Even with the RFA and SBREFA on the books, Advocacy struggled to get agencies to account properly for the impact on their regulations on small businesses. President Bush issued Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," which requires agencies to establish written procedures to measure the impact of their regulatory proposals on small businesses, that they consider Advocacy comments on proposed rules and notify Advocacy when a draft rule may have a significant small business impact. The White House's Office of Information and Regulatory Affairs (OIRA) is responsible for reviewing agency regulations and has the power to stop a rule from moving forward. OIRA was given the authority and duty of preventing needless and redundant information requests from being imposed on the public. While the agencies are required to demonstrate the necessity of the data request and to publish it in the Federal Register for public comment, a strong OIRA is necessary to provide an adequate check for these agencies. OIRA and Advocacy work together to

hold government accountable and reduce the overall burden of small businesses. E.O. 13272 provides a renewed incentive for agencies to upgrade their compliance with the RFA and give proper consideration to small entities in the agency rulemaking process.

V. Agency Compliance

Making compliance easier is crucial to the success of small business. Office of Advocacy statistics show that it annually costs the smallest of businesses almost \$7,000 per employee to comply with federal regulations. That cost places a burden on small business that is 60 percent greater than costs incurred by large corporations. All Cabinet-level departments, except for the Department of State and the Department of Homeland Security, submitted a written plan to Advocacy for review in compliance with section 3(a) of E.O. 13272. Understandably so, Advocacy was less satisfied with the response to E.O. 13272 by independent regulatory agencies. Of the 75 independent regulatory agencies, 16 responded to the requirements of the E.O. Eight provided written procedures to Advocacy, six claimed not to regulate small entities, and two claimed to be exempt from the Executive Order. We are pleased Advocacy continues to work closely with all federal regulatory agencies to train them on the RFA and increase compliance with both the RFA and E.O. 13272.

VI. SBREFA Review Panel

Significant rulemaking improvements have resulted from the SBREFA panel process. These panels occur before the rule is published for public comment. SBREFA review panels consist of representatives from the agency, Advocacy, and OIRA. The panel reaches out to small entities likely to be affected by the proposal, seeks their input, and

prepares a report with recommendations for reducing the potential impact on small businesses. Because agencies are required to convene these panels, small businesses are able to shed light on agencies' underlying assumptions, rationale, and data behind their draft rulemaking. The use of plain language would also improve the panel process. This would ensure getting useful input from all small businesses and not just a few on a panel for a few agencies. Plain language would ensure small businesses spend less time and energy figuring out just what it is that the government wants and how to comply. Without SBREFA panels, rules would be promulgated in forms costing small businesses millions in unnecessary regulatory costs.

VII. Conclusion

Congress and the administration must examine the mountains of paperwork faced by small businesses. In order to make the entire process less burdensome, forms need text to be clear and understandable. Small businesses need to be able to use forms without getting lost and irritated. Plain language would help.

Just as small businesses are held accountable for their actions, agencies also must be accountable. OIRA must take the steps to help agencies comply and enforce Executive Order 12866, SBRPA and SBREFA.

I would like to thank Chairwoman Miller for holding this hearing, bringing this issue to the forefront and for the opportunity to testify.